



PTO/SB/21 (09-06)

Approved for use through 03/31/2007. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	10/585,072
Filing Date	June 29, 2006
First Named Inventor	Ian Charles Ogilvy
Art Unit	Unassigned
Examiner Name	Unassigned
Attorney Docket Number	T2073-00016

**ENCLOSURES (Check all that apply)**

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input checked="" type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	Petition to Revive Under 37 CFR 1.137(b)
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	A copy of Decision on Petition Under 37 CFR 1.137(a)
	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<b>Remarks</b> If a Petition for an Extension of Time is necessary for the paper transmitted herewith to be timely filed, this transmittal is to be considered as a petition to extend the response period by the amount of time needed for the paper to be timely filed. The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 04-1679.	
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application		
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name	DUANE MORRIS LLP		
Signature			
Printed name	Donald R. McPhail		
Date	July 24, 2007	Reg. No.	35,811

**CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:			
Signature			
Typed or printed name		Date	

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



PTO/SB/17 (06-07)

Approved for use through 06/30/2007. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

# FEE TRANSMITTAL

## For FY 2007

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 750.00

**Complete if Known**

Application Number	10/585,072
Filing Date	June 29, 2006
First Named Inventor	Ian Charles Ogilvy
Examiner Name	Unassigned
Art Unit	Unassigned
Attorney Docket No.	T2073-00016

**METHOD OF PAYMENT (check all that apply)**☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☒ Deposit Account Deposit Account Number: 04-1679 Deposit Account Name: \_\_\_\_\_

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

<b>Total Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>	<b>Fee Paid (\$)</b>	<b>Multiple Dependent Claims</b>
- 20 or HP = _____	x _____	= _____		<b>Fee (\$)</b> <b>Fee Paid (\$)</b>
HP = highest number of total claims paid for, if greater than 20.				
<b>Indep. Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>	<b>Fee Paid (\$)</b>	
- 3 or HP = _____	x _____	= _____		
HP = highest number of independent claims paid for, if greater than 3.				

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<b>Total Sheets</b>	<b>Extra Sheets</b>	<b>Number of each additional 50 or fraction thereof</b>	<b>Fee (\$)</b>	<b>Fee Paid (\$)</b>
- 100 = _____	/ 50 = _____	(round up to a whole number) x _____	= _____	

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Petition to Revoke**Fees Paid (\$)**

\$750.00

**SUBMITTED BY**

Signature		Registration No. (Attorney/Agent) 35,811	Telephone 202-776-7800
Name (Print/Type)	Donald R. McPhail		Date July 24, 2007

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



ATTORNEY DOCKET NO. T2073-00016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of Ian Charles Ogilvy

Serial No.: 10/585,072

Art Unit: Unassigned

Filed: June 29, 2006

Examiner: Unassigned

Title: IMPROVED COMPUTING SYSTEM AND COMPUTING DEVICE

**PETITION TO REVIVE THE APPLICATION  
UNDER 37 CFR § 1.137(b)**

Mail Stop **Petition**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant responds to the Decision on Petition Under 37 C.F.R. 1.137(a) (copy enclosed) as follows:

Applicant hereby petitions the Office under 37 CFR §1.137(b) to revive the subject application that was unintentionally abandoned for failure to timely respond to a Notification of Missing Requirements Under 35 U.S.C. 371.

Applicant submits that it has been searching for the inventor, Ian Charles Ogilvy, but has been unable to locate the inventor in order for him to sign the necessary papers to respond to the Notification of Missing Requirements.

The undersigned hereby states that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

The applicable Petition Fee is enclosed.

07/25/2007 SZEWDIE1 00000048 10505072

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Favorable consideration of this petition is solicited.

Respectfully submitted,



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Donald R. McPhail

Reg. No. 35,811

DUANE MORRIS LLP  
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Telephone: (202) 776-7800  
Facsimile: (202) 776-7801

Dated: July 24, 2007

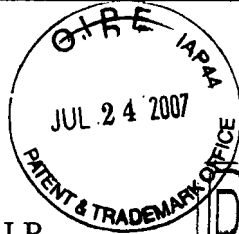
29 MAY 2007



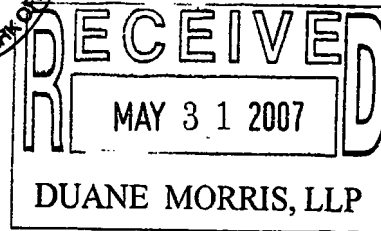
UNITED STATES PATENT AND TRADEMARK OFFICE

T2073-16

Commissioner for Patents  
United States Patent and Trademark Office  
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www.uspto.gov



KED & ASSOCIATES, LLP  
P.O. Box 221200  
Chantilly VA 20153-1200



7.29.07  
DOCKETED

In re Application of  
OGILVY, Ian Charles  
Application No.: 10/585,072  
PCT No.: PCT/AU99/00952  
Int. Filing Date: 02 November 1999  
Priority Date: None  
Docket No.: CRD-0009  
For: IMPROVED COMPUTING SYSTEM AND  
COMPUTING DEVICE

:  
:  
:  
: DECISION ON PETITION  
: UNDER 37 CFR 1.137(a)  
:  
:

This decision is issued in response to applicant's "Petition to Revive the Application under 37 CFR §1.137" filed 14 May 2007, which is being treated as a Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 CFR 1.137(a).

### BACKGROUND

On 02 November 1999, applicant filed international application PCT/AU99/00952 which claimed no priority date. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 11 May 2000. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 02 May 2001.

On 29 June 2006, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia: the \$150 basic national fee, a copy of the international application; a petition to revive under 37 CFR 1.137(b). In a decision dated 28 July 2006, applicant's petition to revive under 37 CFR 1.137(b) was granted.

On 06 September 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating declaration in compliance with 37 CFR 1.497(a) and (b) was required. Furthermore, the Notification indicated that an additional claim fee of \$1780 was due.

On 14 May 2007, applicant filed a "Petition to Revive the Application under 37 CFR §1.137."

### DISCUSSION

A grantable petition pursuant to 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the requisite petition fee; (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer required pursuant to 37 CFR 1.137(c). Applicant has satisfied items (2) and (4) have been satisfied.

Regarding item (1), the required reply was the submission of a declaration in compliance with 37 CFR 1.497, payment of the surcharge for delayed filing of the declaration, and payment of additional fees based on the number of claims presented. Petitioner has not submitted the items listed above. Further, petitioner states that inventor Ian Charles Ogilvy is unavailable to execute the declaration. Therefore, in order to comply with the proper reply requirement of item (1) above for revival under 37 CFR 1.137(a), applicant must submit a grantable petition under 37 CFR 1.47(b). Accordingly, item (1) has not been satisfied.

Regarding item (3), applicant has not met the burden of proof to show that the abandonment was unavoidable. One of the requirements for a grantable petition under 37 CFR 1.137(a) is an adequate showing that the entire delay in filing the required reply was unavoidable. Section 711.03(c)(2), of the Manual of Patent Examining Procedure ("MPEP") states the following:

Decisions on reviving abandoned applications on the basis of 'unavoidable' delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business . . .

Here, applicant states that failure to submit the required reply was unavoidable due to the inability to locate inventor, Ian Charles Ogilvy. However, the actions taken in the prosecution of this case do not reflect unavoidable delay. Specifically, unavoidable delay is present only where petitioner and those acting for petitioner take all actions necessary to continue the prosecution of an application, but through the intervention of unforeseen circumstances, a required action is not timely taken. The actions and circumstances described in this petition, however, do not reflect the "care or diligence that is generally used and observed by prudent and careful men in relation to their most important business." Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

A petition to revive an application under 37 CFR 1.137(a) cannot be granted where a petitioner has failed to meet his burden of establishing unavoidable delay within the meaning of 37 CFR 1.137(a) and 35 U.S.C. 133. Haines v. Quigg, 673 F. Supp. 314, 5

USPQ2d 1130 (N.D. Ind. 1987). Therefore, since applicant has not satisfied item (3) above, the granting of the petition under 37 CFR 1.137(a) for revival based on unavoidable delay would not be proper.

Therefore, in view of the above facts the abandonment cannot be held at this time to be unavoidable.

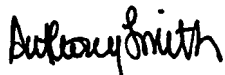
### CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, an appropriate response to this decision must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137 (a)." Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

The file does not indicate a change of correspondence has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.



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Attorney-Advisor  
Office of PCT Legal Administration  
Tel: (571) 272-3298  
Fax: (571) 273-0459

cc: Donald R. McPhail  
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Washington, DC 20006